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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 RONALD RICHMAN,

12 Plaintiff,

13 vs.

14 UNITED STATES OF AMERICA, et al.

15 Defendants.

) Case No. C07-05317 WHA
) [C08-03499-MEJ; RELATED ACTION]
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **RONALD RICHMAN'S MOTION TO**
) **INTERVENE AS A PLAINTIFF [F.R.C.P.**
) **RULE 24]**
)
) **Date: October 9, 2008**
) **Time: 8:00 a.m.**
) **Place: Ctrm 9, 19th Floor**
) **Before: Hon. William H. Alsup**

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19 Plaintiff, Ronald Richman, submits the following Points and Authorities in support of
20 his Motion to Intervene in the action filed by his employer, County of Contra Costa:

21 **RONALD RICHMAN IS ENTITLED TO INTERVENE IN THE ACTION FILED**
22 **BY HIS EMPLOYER BECAUSE HIS EMPLOYER'S CLAIM AGAINST THE UNITED**
23 **STATES WAS FILED WITH THE APPROPRIATE AGENCY IN A TIMELY**
24 **MANNER. [F.R.C.P. Rule 24].**
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RONALD
RICHMAN'S MOTION TO INTERVENE AS A PLAINTIFF [F.R.C.P. RULE 24]

1 Under California law, both the employer and the employee have a right to intervene in
2 an action filed by the other. [California Labor Code §3853; *State Compensation Insurance*
3 *Fund v. Matulich* (1942) 55 Cal. App. 2nd 528, 530]. The allowable damages in a Federal Tort
4 Claim Action are determined by State law. [*Lewis v. United States*, 680 F. 2nd 86, 69; 9th Cir.
5 1982]. An employer's claim for reimbursement is predicated upon proving the total amount of
6 the employee's personal injury damages and the employer's recovery is governed by the
7 amount the injured worker could recover. [*Breese v. Price* (1981) 29 Cal. 3rd 923, 926, 928].
8 *Breese* further held that "...substantively, as well as procedurally, employer and employee
9 actions are interchangeable: regardless of who brings an action, it is essentially the same
10 lawsuit." [*Breese v. Price, Supra* at page 928; *County of San Diego v. Sanfax Corp.* (1977) 19
11 Cal. 3rd 862, 874].

13 Federal Courts apply California law on issues involving Workers' Compensation and
14 the right to intervene in third-party Workers' Compensation claims at any time before trial.
15 [California Labor Code §3853; *Charter Oak Fire Ins. Co. v. Sodexo Marriott*, 478 F. Sup. 2nd
16 1151, 1153 (N.D. Cal. 2007)]. An administrative claim filed by the employer serves to toll the
17 limitations with respect to the employee since the actions are essentially the same and
18 "interchangeable." [California Labor Code §3853; *Breese v. Price, Supra*; *County of San*
19 *Diego v. Sanfax Corp.*; *Executive Jet Aviation v. United States*, 507 F. 2nd 508, 517]. The
20 technical procedure of the Torts Claims Act are subject to the clear demands of justice. [*Sky*
21 *Harbor Air Service, Inc. v. United States*, 34 F. Supp. 594 (D. Neb. 1972); *Ozark v. Airlines,*
22 *Inc. v. Delta Airlines, Inc.*, 63 F.R.D. 69(N.D. Ill. 1974)].

24 In *Young v. United States*, 372 F. Supp. 736, 741 (S.D. Ga. 1974), a husband filed an
25 administrative claim for the death of his wife; the children did not. The government moved to

1 dismiss the children because of their failure to file an administrative claim. Defendant's
2 Motion to Dismiss was denied because "strict reliance on the technicalities of the regulations
3 would work an injustice." [See also, *Locke v. United States*, 351 F. Supp. 185(d) Hawaii 1972;
4 *Stokes v. United States*, 444 F. 2nd 69 (4th Cir. 1971)].

5 The purpose of the claims filing requirement is to ease court congestion and make it
6 possible for early settlement of claims against the government. This requirement was not
7 created to eliminate claims or "act as a trap for the unwary claimant." [*Sky Harbor Air Service*
8 *v. United States, Supra*]. The 9th circuit has followed the reasoning of the above referenced
9 cases. [*Cummings v. United States*, 704 F. 2nd 437 (9th Cir. 1983)].

11 CONCLUSION

12 Mr. Richman's claim is based on the same law and facts as that of the County of Contra
13 Costa. The actions are interchangeable; regardless of who brings the action, it is essentially the
14 same lawsuit.

15 Initially, both Mr. Richman and the County of Contra Costa filed their administrative
16 claims with the wrong agency. The agency that received the administrative claims had an
17 affirmative duty to forward **both** claims to the appropriate federal agency or to return the
18 claims to the individual claimants. Even though Mr. Friedrich received Mr. Richman's claim
19 over a year before the expiration of the claim's filing deadline and received the claim of the
20 County of Contra Costa over seven months before the statutory period expired, he failed to
21 return either of the claims or to forward either of the claims to the appropriate federal agency.

22 Fortunately, the County of Contra Costa filed its claim, arising out of the same accident,
23 on October 16, 2007, six days before the expiration of the statutory period.
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1 It is respectfully submitted that California law allows Mr. Richman to intervene in the
2 County's action and that his Motion to Intervene has been submitted in a timely fashion.

3 Respectfully submitted,

4 DATED: August 20, 2008

LAW OFFICES OF WILLIAM G. MCDEVITT

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7 By 

8 WILLIAM G. MCDEVITT, Esq.
9 Attorneys for Plaintiff
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Richman v. United States of America, et al.
USDC Case No. C07-05317 JCS

PROOF OF SERVICE (Code Civ. Proc. § 1013a)

I am a citizen of the United States. My business address is 222 Rush Landing Road, P.O. Box 6169, Novato, CA 94948. I am employed in the County of Marin, where this mailing occurs. I am over eighteen years of age and not a party to the within cause. On the date set forth below, I served the attached document described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RONALD RICHMAN'S MOTION TO INTERVENE AS A PLAINTIFF [F.R.C.P. RULE 24]

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:


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- ☒ **(BY MAIL)** I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on August 21, 2008, following ordinary business practices.
- ☐ **(BY EXPRESS MAIL OVERNIGHT DELIVERY)** I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by the US Postal Service. I am readily familiar with Brayton Purcell's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Brayton Purcell's business practice the document described above will be deposited in a box or other facility regularly maintained by the US Postal Service at Novato, California on the same date that it is placed at Brayton Purcell for collection
- ☐ **(BY FACSIMILE)** I caused said documents to be transmitted by facsimile machine to the number indicated after the address(es) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 21, 2008, at Novato, California.



Krystal Correia